

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CYNTHIA DAVIS,

Plaintiff

v.

USA TODAY; GANNETT SATELLITE
INFORMATION NETWORK; GANNETT
NATIONAL NEWSPAPER SALES;
DAVID TUTT; RANDY SCHAWA AND
BRIAN KELLY

Defendant.

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CIVIL ACTION NO.

JURY DEMAND

DEFENDANTS' NOTICE OF REMOVAL

Defendants USA Today, Gannett Satellite Information Network, Gannett National Newspaper Sales, David Tutt, Randy Schawe, and Brian Kelly file this Notice of Removal pursuant to 28 U.S.C. § 1441 *et seq.* and state:

1. Plaintiff Cynthia Davis ("Davis") commenced an action against Defendants USA Today, Gannett Satellite Information Network, Gannett National Newspaper Sales, David Tutt, Randy Schawe, and Brian Kelly (collectively, "Defendants"), styled *Cynthia Davis v. USA Today, Gannett Satellite Information Network, Gannett National Newspaper Sales, David Tutt, Randy Schawe, and Brian Kelly*, Cause No. 2009-14679, Harris County District Court, 125th Judicial Court. The first date upon which Defendants received a copy of the Petition was March 16, 2009, when it was served on Defendants. No other paper with regard to this cause has been served on the Defendants.

2. The face of Davis's Original Petition invokes federal jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1343. Furthermore, Davis appears to assert claims under the Fair Labor

Standards Act and 42 U.S.C. §§ 1981 and 1986, and thus, this Court has original jurisdiction over this action under 28 U.S.C. § 1331. As such, this action is one which may be removed to this Court by the Defendants pursuant to the provisions of 28 U.S.C. § 1441(b) in that it arises under federal law. *See* Plaintiff's Original Petition at 2-5, 31-32. Furthermore, because Davis has asserted claims under federal law, this Court also has pendent jurisdiction over her state law claims pursuant to 28 U.S.C. § 1367, and they may be removed pursuant to 28 U.S.C. § 1441(c), because they are so related to the federal causes of action that they form part of the same case or controversy under Article III of the United States Constitution. *See Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165 (1997).

3. As required by 28 U.S.C. § 1441, the 125th Judicial District Court of Harris County, Texas falls within the geographical purview of this Court.

4. Pursuant to 28 U.S.C. § 1446(a), the following documents are filed herewith: (1) an index of all matters being filed with this Notice of Removal is attached as Exhibit A; (2) true and correct copies of all process, pleadings, and any orders served upon the Defendants in this matter are attached as Exhibit B; (3) all orders signed by the state court judge are attached as Exhibit C; (4) the State Court Civil Docket Sheet is attached as Exhibit D; (5) a list of all counsel of record, including addresses, telephone numbers, and parties represented is attached as Exhibit E; and (6) Defendant's Notice of Removal of Civil Action is attached hereto as Exhibit F.

5. Upon the filing of this Notice of Removal, the Defendants will also provide written notice of this removal with proof of service of same attached hereto to all parties. A copy of this Notice of Removal is also being filed with the Clerk of the Harris County District Court in which this cause was originally filed.

WHEREFORE, Defendants USA Today, Gannett Satellite Information Network, Gannett National Newspaper Sales, David Tutt, Randy Schawe, and Brian Kelly respectfully pray that Cause No. 2009-14679 be removed to this Court and that this Court accept jurisdiction of this action. Defendants further pray that this Court place this action on its docket for further proceedings as though it originated in this Court and that this Court issue all necessary orders.

Date: April 6, 2009

Respectfully submitted,

/s/ Nancy L. Patterson

Nancy L. Patterson

Attorney-in-charge

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ATTORNEYS FOR DEFENDANTS
USA TODAY; GANNETT SATELLITE
INFORMATION NETWORK; GANNETT
NATIONAL NEWSPAPER SALES; DAVID
TUTT; RANDY SCHawe AND BRIAN KELLY

CERTIFICATE OF SERVICE

The undersigned certifies that on this the 10th day of April, 2009, a true and correct copy of the foregoing Notice of Removal was served upon the following party via the Court's CM/ECF system and certified mail, return receipt requested:

Ms. Cynthia Davis
Pro Se
P.O. Box 321383
Houston, TX 77221
davisc60@yahoo.com

/s/ Nancy L. Patterson

Nancy L. Patterson